APPEAL NO. 033111
FILED JANUARY 20, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on November 6, 2003. The hearing officer determined that the respondent's (claimant) compensable (cervical) injury extends to and includes herniated discs at the C2-3, C3-4, C4-5, and C6-7 levels of the cervical spine, and that the claimant has had disability from May 2, 2003, through the date of the CCH.

The appellant (carrier) appeals, basically on sufficiency of the grounds. The claimant responds, urging affirmance.

DECISION

Affirmed, as reformed.

The parties stipulated that the claimant sustained a compensable injury on _____, and the claimant testified how she injured her neck pulling some meat out of a deli case. The parties appear to agree that an MRI performed on December 19, 2001, showed a herniation at C6-7 with no nerve impingment. The medical evidence and the claimant's testimony indicate that the claimant continued to have problems and that she changed treating doctors in December 2002. The new treating doctor referred the claimant to Dr. D. Subsequently a discogram revealed disc herniations at C3-4, C4-5, and C6-7. Dr. D testified at the CCH that the claimed additional injuries were related to the claimed injury, explaining his reasoning and that the 2001 MRI did not show the additional herniations because MRIs can fail to detect herniations up to 40% of the time.

The medical evidence was clearly in conflict. A carrier required medical examination (RME) doctor was of the opinion that the claimant had only sustained a cervical strain, that there was no evidence of cervical nerve root compression, and explained why he believed the initial treating doctor's reports were inaccurate. Dr. D disagreed with the RME doctor's opinion explaining his reasoning. The hearing officer commented that she found Dr. D's testimony credible. Conflicting evidence was presented on the disputed issues. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). As the trier of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established.

Part of the carrier's appeal points out that:

> [T]here is no evidence the claimant has herniations at C2-3. There is no diagnostic test indicating a herniation at C2-3. [Dr. D] made no mention of a herniation at this level.

A careful review of the record indicates that the carrier is at least partially correct. Dr. D reports, and his testimony relate to the C3-4 level or "C3–C7 excluding C5-C6" and does not mention the C-2 level. Consequently, we reform the hearing officer's decision to conform to the evidence that the compensable injury extends to and includes herniated discs beginning at C3-4 instead of C2-3. Our reformation of the hearing officer's decision to reflect the evidence takes no position, one way or the other, whether a herniation exists at the C-2 level.

Other than as noted, the hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed as reformed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Chris Cowan
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge